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Strengthening of the rule of law

Report of the Secretary-General**

Summary

The Office of the United Nations High Commissioner for Human Rights is responsible for coordinating the activities of the United Nations system in the areas of human rights, democracy and the rule of law. This role has been affirmed by the General Assembly. In this regard, the Office of the High Commissioner has made promotion of the rule of law a priority in its technical cooperation programmes, recognizing the link between the rule of law and respect for human rights. The technical cooperation programme offers assistance in a wide range of areas, including support for reporting under human rights treaties; development and implementation of national plans of action; establishment and strengthening of national institutions; assistance with constitutional and legislative reform, administration of justice, elections and national parliaments; and training for police, armed forces, prison personnel and legal professionals.

An increasingly important part of the Office's field work in the area of the rule of law is to assist in the design of the human rights components in United Nations peace operations and provide advice once they are formed. This has entailed cooperative arrangements with the Department of Peacekeeping Operations in Bosnia and Herzegovina, the Democratic Republic of the Congo, East Timor, Eritrea, Georgia, Kosovo (Federal Republic of Yugoslavia) and Sierra Leone; and with the Department of Political Affairs in Afghanistan, Angola, Burundi, the Central African Republic, Guatemala, Guinea-Bissau, Liberia and Tajikistan.

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An essential element of any framework for the strengthening of the rule of law is a domestic constitutional and legal system which lists and limits emergency powers and permissible derogations from human rights during a state of emergency, consistent with the provisions of article 4 of the International Covenant on Civil and Political Rights. Human rights law strikes a balance between legitimate national security concerns and the protection of fundamental freedoms, while conceding that derogation from a number of rights may be permitted in times of national emergency. However, article 4 of the Covenant subjects such derogations to substantive and procedural safeguards regarding the declaration and implementation of a state of emergency; it also requires that derogation from certain rights not be allowed under any circumstances. These include the right to life; freedom of thought, conscience and religion; freedom from torture or cruel, inhuman or degrading treatment; and the principles of non-retroactivity and precision of criminal law except where subsequent legislation imposes a lighter penalty.

With regard to future activities, the Office of the High Commissioner intends to exchange views and experiences with relevant associations of judges and lawyers on the role of judges and lawyers at the national, regional, subregional and international levels in the promotion and protection of human rights and the rule of law. Furthermore, the Office is currently implementing a project aimed at developing guidelines to help ensure the centrality of human rights in the administration of transitional justice in post-conflict and post-crisis countries.

I. Introduction

1. In its resolution 55/99 of 2 November 2000, the General Assembly affirmed the role of the Office of the United Nations High Commissioner for Human Rights in coordinating the activities of the United Nations system in the areas of human rights, democracy and the rule of law, and it welcomed the ongoing cooperation in this regard. The Office of the High Commissioner has made the promotion of the rule of law a priority in its technical cooperation programmes, recognizing the link between the rule of law and respect for human rights. Key elements of the rule of law include an independent judiciary, independent national human rights institutions, defined and limited powers of Government, fair and open elections, a legal framework protecting human rights and guidelines governing the conduct of police and other security forces that are consistent with international standards.

2. In its resolution 1999/74, the Commission on Human Rights encouraged the High Commissioner to pursue consultations between her Office and other organs and agencies of the United Nations system with a view to obtaining increased financial assistance for human rights and the rule of law. Presently, the Office's main funding sources for activities related to the rule of law are from the regular budget (in respect of the special procedures) and voluntary funds (Voluntary Fund for Technical Cooperation in the Field of Human Rights).

II. Technical cooperation

3. The technical cooperation programme of the Office of the High Commissioner supports Governments, at their request, in promoting and protecting all human rights at the national and regional levels by incorporating international human rights standards into national laws, policies and practices and by building sustainable national capacities to implement those standards and ensure respect for human rights.

4. The number of States requesting assistance in fortifying and consolidating the rule of law has continued to grow and can be considered an indicator of the growing awareness of the importance of the rule of law. As of 30 April 2002, 51 ongoing technical cooperation projects were being administered by the Voluntary Fund for Technical Cooperation in the Field of Human Rights, at least 35 of which were providing support to activities related to strengthening the rule of law.

5. The technical cooperation programme offers assistance in a wide range of areas. This includes support for reporting under human rights treaties; development and implementation of national plans of action; establishment and strengthening of national institutions; assistance with constitutional and legislative reforms, administration of justice, elections and national parliaments; and training for police, armed forces, prison personnel and legal professionals. The level of involvement of non-governmental organizations and civil society, in both implementation and participation in training, continues to grow.

III. Human rights training materials

6. In the endeavour to strengthen the United Nations system-wide approach to promoting the rule of law and human rights, the Office of the High Commissioner has developed training materials intended for both United Nations staff and civil servants of countries receiving technical cooperation. Training materials for United Nations staff include a training package on human rights monitoring; a handbook on free and fair elections for elections officers; and field guides on human rights and law enforcement for international civilian police monitors. Materials under preparation include human rights training packages for police and military peacekeepers.

7. Training materials for civil servants of countries receiving technical cooperation include a human rights training package and a handbook on pre-trial detention for civilian police. Other materials under development include handbooks for prison officials, judges, prosecutors, lawyers, parliamentarians and military personnel. A handbook on conflict resolution has been drafted and is awaiting final approval for use in the field.

IV. National human rights institutions

8. The Office of the United Nations High Commissioner for Human Rights, through the special adviser on national institutions, supports the establishment and strengthening of national human

rights institutions as a key mechanism in support for rule of law. Such institutions can make a substantial contribution by transforming the goals of international instruments into reality at the national level.

9. National human rights institutions contribute to the development of pluralistic democracies respecting the rule of law by providing advice to Governments on legislation, policies and programmes; promoting the harmonization of national legislation, regulations and practices with international standards; promoting human rights and fundamental freedoms through education and information; building bridges between Governments and civil society; undertaking investigations of alleged human rights violations either at the request of authorities or suo moto; establishing complaint mechanisms, providing early warning as to critical issues; acting as amicus curae in cases which can have an important impact including on the rule of law; and allowing for public inquiries that provide insight into systemic problems.

10. The Office of the High Commissioner provides advice on legislative, procedural and substantive issues of relevance to national human rights institutions, usually in the context of needs-assessment or project formulation missions. Technical cooperation projects currently under way include those with the human rights commissions of Malawi, Mongolia, Rwanda and Uganda, and the Defensor del Pueblo of Ecuador.

11. The Office is also working to establish a methodology for the creation of national human rights institutions in countries in crisis or in transition. The Bonn agreement provided for the establishment of a national human rights institution in Afghanistan, and the Office participated in the elaboration of the legislative text. Human rights institutions have also been established in East Timor and Sierra Leone with the assistance of the Office of the High Commissioner. In the occupied Palestinian territories, the Office has focused particular attention on the Palestinian Independent Commission for Citizens Rights as a key partner in hopes of eventually entrenching the institution in national legislation.

V. Office of the High Commissioner rule of law-related support to peace operations

12. An increasingly important part of the Office's field work includes assisting in the design of the human rights components in United Nations peace operations and providing advice once they are formed. This has entailed cooperative arrangements with the Department of Peacekeeping Operations in Bosnia and Herzegovina, the Democratic Republic of the Congo, East Timor, Eritrea, Georgia, Kosovo (Federal Republic of Yugoslavia) and Sierra Leone, and with the Department of Political Affairs in Afghanistan, Angola, Burundi, the Central African Republic, Guatemala, Guinea-Bissau, Liberia and Tajikistan.

13. The types of assistance provided by the Office have included the deployment of a judicial adviser to the United Nations Assistance Mission in Afghanistan and human rights training and education to rule of law-related actors, including local and United Nations civilian police serving with the United Nations Transitional Administration in East Timor.

14. In some post-conflict countries, the Office of the High Commissioner works in coordination with other United Nations partners, including the United Nations Development Programme, to support judicial reform and other initiatives through capacity-building and training programmes for local judges, prosecutors and lawyers, and through human rights training for civil servants. The Office's human rights training methodology, reflected both in its training materials as well as in the organization of training courses, was developed after a thorough review of training activities conducted within and outside of the United Nations, and aims at imparting training on rule of law issues that is audience-specific, practical and competency-based.

15. The Executive Committee on Peace and Security, established under the authority of the Secretary-General, has formed a task force on the rule of law comprising all relevant United Nations agencies and departments, including the Office of the High Commissioner. The task force has been mandated to examine the rule of law-related competencies and resources of those United Nations agencies and departments and their prior experience in providing rule of law-related support to peace operations. The

task force is also mandated to examine the rule of law-related competencies and resources of the various external entities that have collaborated with United Nations task force partners, with a view to developing comprehensive rule of law strategies for United Nations peace operations.

VI. Rule of law in states of emergency

16. An essential element of any framework for strengthening the rule of law is a domestic constitutional and legal system that lists and limits emergency powers and permissible derogations from human rights during a state of emergency, consistent with the provisions of article 4 of the International Covenant on Civil and Political Rights.

17. Human rights law strikes a balance between legitimate national security concerns and the protection of fundamental freedoms. It concedes that derogation from a number of rights may be permissible in times of national emergency, but article 4 of the Covenant subjects such derogations to substantive and procedural safeguards regarding the declaration and implementation of a state of emergency. These safeguards include the following:

- The nature of the emergency must threaten the life of the State;
- The existence of a state of emergency must be officially declared;
- The measures adopted are necessary to the extent strictly required by the exigencies of the situation;
- The derogations are not incompatible with the State's other international law obligations;
- The derogating State notifies other States, through the Secretary-General of the United Nations, of the provisions it derogated from and the reason for this step, as well as of the date when the emergency has ceased to exist.

18. Article 4 of the Covenant requires that derogation from certain rights not be permitted under any circumstances. These include the right to life; freedom of thought, conscience and religion; freedom from torture or cruel, inhuman or degrading treatment; and the principles of non-retroactivity and precision of criminal law except where subsequent legislation imposes a lighter penalty.

19. In its general comment No. 29, adopted on 24 July 2001, the Human Rights Committee, which monitors the implementation of guarantees enshrined in the Covenant by States parties, provides an authoritative guideline for the interpretation of article 4 of the Covenant and the permissibility of derogations from Covenant provisions (A/56/40, vol. I, annex VI). It observes that for rights other than those mentioned above, derogations are only permitted in the special circumstances defined in human rights law: they must be exceptional and carefully weighed. Any such measures must be strictly limited in time and substance, and be subject to regular review. The absence of such regular review and the persistence of quasi-permanent states of emergencies in a number of States parties to the Covenant have been rightly criticized by the Committee. Finally, the process of adopting derogations must be consistent with established national and international procedures.

20. In its general comment, the Human Rights Committee underlines that even in time of armed conflict, derogations from the Covenant are admissible only if and to the extent that the situation constitutes a threat to the life of the nation. Even then, States should carefully consider why such a measure is necessary and legitimate in the circumstances. All too often constitutional provisions providing for the declaration of a state of emergency are too broad and cover grounds not mentioned in article 4 of the Covenant. The general comment develops a list of rights and freedoms that cannot be subject to lawful derogations. It includes the following elements: all those deprived of liberty must be treated with respect for their dignity; the taking of hostages, abductions and unacknowledged (incommunicado) detention are prohibited; and "no declaration of a state of emergency ... may be invoked as justification for a State party to engage itself ... in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence" (see A/56/40, vol. I and annex VI).

21. General comment No. 29 further outlines a number of fundamental principles related to respect of the right to a fair trial. Thus, any trial leading to the imposition of the death penalty during a state of emergency must be in strict compliance with the provisions of the Covenant, especially those relating to

fair trial. Respect for the presumption of innocence and the right to a fair hearing by a competent, independent and impartial tribunal are essential elements of the right to a fair trial; however, as the Committee has noted, they are often ignored by States parties during states of emergencies, and procedures before special courts set up during a state of emergency are frequently incompatible with article 14 of the Covenant. The Committee further underlines that, as the right to a fair trial is explicitly guaranteed under international humanitarian law, especially the Geneva conventions, during armed conflict, derogation from fair trial guarantee cannot occur during other emergency situations.

22. General comment No. 29 further recalls that human rights law requires that where exceptional circumstances allow for the limitation of some rights for legitimate and clearly defined situations other than emergencies, the principles of necessity and proportionality must always be taken into consideration. The measures taken must be appropriate and the least intrusive to achieve the objective. The principle of non-discrimination must be adhered to and special efforts made to protect the rights of vulnerable groups. Emergency measures and legislation that would target specific religious or ethnic groups are contrary to human rights law.

23. Other than the principles spelled out in its general comment No. 29, the Human Rights Committee has provided a number of other interpretative guidelines that may assist Governments in adopting and implementing emergency measures that are consistent with human rights law. Thus, the Committee has frequently voiced concern over the tendency of States parties to broaden the powers of arrest and detention during a state of emergency, in ways that are not compatible with article 9 of the Convention (right to liberty and security of person). It has further expressed concern where States parties extend the jurisdiction of military tribunals to try civilians accused of common crimes when exceptional circumstances so warrant, such as during a state of emergency.

24. The Committee has indicated that it will in the future devote increased attention to the monitoring of state of emergency legislation adopted by States parties to the International Covenant on Civil and Political Rights.

VII. Examples of technical cooperation activities in the area of rule of law

Azerbaijan

25. The Office of the United Nations High Commissioner for Human Rights is providing assistance to the Government in ensuring improved compliance with international standards in law enforcement and the administration of justice by training police officials at the national level before continuing with training at the district level. The approach includes the development of a pilot training course in cooperation with officials of the national police academy. The Office will also provide advice to the Government in developing standing orders and regulations on selected topics affecting procedures for investigations, arrests, use of force and firearms, visitation and access to counsel, conditions of detention and related issues.

26. The Office is also assisting in strengthening national capacity in treaty-reporting processes through cooperation with the Ministry of Justice and other ministries of Azerbaijan. A workshop on improving coordination for treaty-reporting obligations was convened this year for relevant ministries and civil society organizations.

Burundi

27. In Burundi, the Office of the High Commissioner conducts human rights monitoring in support of the peace process. The field office investigates allegations of human rights abuse and visits prisons and police facilities throughout the country. The Office also conducts training activities for civil servants, including military judges, judicial police officers and various professional associations. In 2001, training on human rights in the administration of justice and on legal techniques was provided for 37 military judges and 34 judicial police officers as well as for candidates for the gendarmerie in the training centre of Bujumbura.

28. Other events included a one-day workshop on torture, a workshop on testimony in criminal trials and legal assistance to national lawyers involved in the criminal justice process. Also in 2001, the Office provided legal assistance in the three criminal chambers in Burundi. Eight national lawyers assisted

plaintiffs and defendants in the mobile session of the criminal divisions. In all, the Office's legal assistance programme provided assistance in 1,896 cases.

Colombia

29. The Office of the High Commissioner has provided advice to the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and of the Application of International Humanitarian Law, so as to define a methodology to assist in the design of a national human rights plan of action. The field office has also provided assistance in developing a strategy for human rights and international humanitarian law training for use by the office of the Attorney General in its school of Criminal Investigation and Criminal Studies and at the training school of the Supreme Judicial Council. Since the establishment of the training courses, 56 officials including prosecutors, investigators, and members of the Technical Investigations Unit of the Attorney General's office, and 70 members of the new human rights satellite units in Medellin have been trained.

30. A seminar on judicial guarantees was held at the national public advocacy department, with the objective of requiring public defenders to take an active role in ensuring that judicial guarantees were fulfilled. The Office of the High Commissioner, in coordination with the staff at the office of the People's Advocate, has also provided education on the international entities and mechanisms for protecting human rights, their functions, reports, doctrine and jurisprudence.

31. The Office of the High Commissioner provided technical assistance to the office of the Delegate Advocate on Criminal and Penitentiary Policy by convoking a mission of international experts who visited 15 detention centres and interviewed the inmates, governmental and non-governmental authorities, defence lawyers and inmates' relatives in order to draw up a technical-juridical report on the prison situation. The field office has also provided support to the Delegate Procurator-General's office to establish a policy for the prevention of human rights violations, in the context of a memorandum of understanding signed with that office.

Federal Republic of Yugoslavia

32. The Office's field presence in the Federal Republic of Yugoslavia analyses the progress of rule of law reform by investigating the prevalence of systemic human rights problems in the justice system. The Office's staff monitor important trials and pre-trial investigations, undertake prison visits, and interview witnesses and victims of serious human rights violations. The Office of the High Commissioner is currently focusing on lengthy pre-trial detentions in Montenegro, stalled investigations of mass graves in Serbia, and the response of Serbia and officials of the Federal Republic of Yugoslavia to human rights complaints against police and municipal officials in southern Serbia. In Kosovo, the Office engages the United Nations Interim Administration Mission in Kosovo over serious human rights problems in the administration of justice.

33. At the same time, the Office is directly supporting government ministries engaged in rule of law reform, commenting on new legislation with human rights implications, advising Serbia and Montenegro on the establishment of national human rights (ombudsperson) institutions (while carrying out a training assessment mission for the Ombudsperson in Kosovo), supporting the work of a new judicial training institute, and providing training to both government officials and non-governmental organizations for the reintegration of the Federal Republic of Yugoslavia into the United Nations human rights treaty reporting process. The Office's human rights training manual for prison officials has been translated into Serbian and is used in prison reform programmes in Serbia.

34. The field presence of the Office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia seeks to ensure that inter-agency and cross-boundary approaches in the region are compatible with international human rights standards. This has been particularly relevant with regard to such issues as internally displaced persons, refugee return, and discrimination against the Roma. The Office of the High Commissioner chairs a human rights contact group in the Federal Republic of Yugoslavia to consider the human rights dimensions of these issues, participates in a working group dealing with internally displaced persons led by the Office for the Coordination of Humanitarian Affairs, and reviews the strategies of the Federal Republic of Yugoslavia

authorities and the Mission on refugees and internally displaced persons. Technical advice is provided on the ways in which human rights standards can be more effectively integrated into programmes for internally displaced persons implemented by other actors, including the United Nations country team.

35. In the Federal Republic of Yugoslavia, the Office is also involved in training civil servants to raise awareness of international human rights standards; in protecting individuals belonging to national minorities; and jointly with the Organization for Security and Cooperation in Europe in Montenegro, the United Nations Development Fund for Women in Kosovo, and non-governmental organizations, in monitoring the trafficking of persons and gender-based violence.

Bosnia and Herzegovina

36. Rule of law activities of the Office's field presence and through support to the United Nations Mission in Bosnia and Herzegovina include, in collaboration with the Organization for Security and Cooperation in Europe, taking the lead in advising the Government on the integration of human rights guidelines into national policy to combat the problem of trafficking in human beings. The main focus of the interventions has been to ensure that priority is placed on the human rights of trafficking victims.

37. The Office has also assisted with the formulation of a regional strategy (with other field presences and partners) concerning laws that impose obstacles to the return/reintegration of refugees, and is currently revising the human rights training manual used by the Mission and the International Police Task Force.

Timor-Leste

38. The Office's technical cooperation project with the United Nations Transitional Administration in East Timor included support and provision of experts for human rights training of the police of Timor-Leste, the civilian police, judges, prosecutors, public defenders, officers and wardens at all three prisons in the country. Training was based upon the Office's training manuals for police, judges and lawyers, and reflected local conditions.

39. The Office of the High Commissioner also provided support in the establishment of the Truth Reception and Reconciliation Commission. Assistance thus far has included drafting the legislation establishing the Commission, aiding in the development of an organizational plan and budget, establishing the methodology and modus operandi for the Commission, training the Commissioners and staff, and advising the Commission on donor outreach and fund-raising strategies. Future activities will include stand-by technical advice once the Commission begins its hearings.

40. The Office of the High Commissioner provided technical advice in the process of drafting the Constitution in order to ensure reflection of international human rights standards. It also provided legal advice and assistance on draft and existing legislation to ensure conformity with international human rights standards.

VIII. Future cooperation on the role of judges and lawyers

41. Increasingly the importance of the rule of law in ensuring respect for human rights, and of the role of judges and lawyers in defending human rights, is being recognized. Significant attention is already being given to structural issues, such as the importance of national systems for the promotion and protection of human rights, and the role of national action plans and national human rights institutions in the Office's human rights programmes. In the future, it will be important to place particular emphasis on the role of judges and lawyers and on the role of the international community in providing materials and case law for use by judges in this area. It will also be important to organize more and more exchanges of experiences among judges and lawyers at the national, regional, subregional and international levels so as to enhance progressively the role of judges and lawyers in the promotion and protection of human rights worldwide. In undertaking these activities, the Office will collaborate, as necessary, with the Special Rapporteur on the independence of judges and lawyers, to whom the Office provides the support necessary for the discharge of his mandate.

42. As part of the process of giving more emphasis to the role of judges and lawyers, information and publications will be disseminated periodically together with human rights materials destined for the use of

judges and lawyers. A focused strategy meeting, aimed at deepening cooperation in this area, will be organized with associations specializing in the role of judges and lawyers. To that end, a manual on human rights for judges, prosecutors and lawyers, "Human rights in the administration of justice", which the Office is finalizing, will be published as a matter of urgency and abstracts from it will be widely disseminated.

IX. Future activities

43. The Office is currently implementing a project to develop guidelines that will help ensure the centrality of human rights in the administration of transitional justice in post-conflict and post-crisis countries. The project will identify the actual needs of the United Nations system through consultations with key United Nations partners as well as with other relevant external entities and convene an expert workshop to prepare guidelines for criminal procedures for the administration of justice in post-conflict countries. In addition, the Office plans to enhance its capacity to provide legal advice for the drafting of human rights-sensitive legislation, codes and regulations. This project partially complements the work currently being undertaken by the Executive Committee on Peace and Security task force on the development of comprehensive rule of law strategies for peace operations.

X. Conclusions

44. The promotion of the rule of law is predicated on the linkage between the promotion and protection of human rights and the rule of law, and on the recognition of these as the indispensable foundations for sustainable democracy. The Office of the High Commissioner will, therefore, continue to place particular emphasis on the promotion and strengthening of the rule of law in its technical cooperation programme as well as in other activities falling within its mandate and within available resources. In this respect, efforts will focus in particular on the development of the Office's capacities for providing support and assistance to countries, upon request, in the rule of law-related aspects of human rights education. Those efforts will also include the establishment and strengthening of national human rights institutions through the technical cooperation programme. Within the United Nations system, the Office will provide greater support and advice to its key partners on rule of law-related issues, especially within the context of United Nations peace operations and the administration of transitional justice in post-conflict situations.

45. The Office will further strengthen support of the special procedures and mechanisms, and the principal human rights treaties, including in particular the Special Rapporteur on the independence of judges and lawyers and the Human Rights Committee, in developing normative guidance on rule of law issues. To this end, States are encouraged to cooperate with the special procedures and mechanisms and facilitate the effective incorporation of the relevant international standards in their national legislation, policies and practices.